

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIRCLE, INC.	*	CIVIL ACTION NUMBER:
	*	
VERSUS	*	SECTION: " "
	*	
U.S. ARMY CORPS OF ENGINEERS	*	MAGISTRATE: ()
	*	
	*	

FREEDOM OF INFORMATION ACT COMPLAINT
FOR PRELIMINARY AND FINAL INJUNCTION

Now comes plaintiff, Circle, Inc., who avers as follows:

I.

This action is brought under the Freedom of Information Act (5 U.S.C.A. § 552(a)(4)(B)), and seeks a preliminary and final injunction against withholding certain information from plaintiff and directing that it be disclosed.

II.

Plaintiff, Circle, Inc. ("Circle"), is a corporation organized and existing under the laws of the State of Louisiana, with its principal office in the Parish of Plaquemines, State of Louisiana.

III.

Defendant, U.S. Army Corps of Engineers ("Corps"), is a federal administrative agency within the meaning of the Act.

IV.

Venue of this action is proper in this Court because the documents requested are maintained within this district.

V.

The Corps maintains, at its New Orleans District Office, certain records consisting generally of plans, drawings, notes, reviews, analyses, reports, photographs, calculations, technical evaluations, memoranda, correspondence, meeting minutes, studies and other documents which relate to Contract No. W912P8-09-D-0052, Task Order No. 004 St. Charles Parish Levee, Reach 1A From Cross Bayou to St. Rose and Gulf South Flood Wall - Phase 2, LPV-04.2A ("Requested Records"), in which Circle has an interest by reason of being a subcontractor involved in the Project.

VI.

On or about June 29, 2011, Circle submitted a FOIA request to the Corps, seeking disclosure of the Requested Records ("Initial Request"). Exhibit 1.

VII.

On August 1, 2011, having received no response from the Corps to Circle's Initial Request, Circle requested in writing that the Corps respond to Circle's FOIA request and disclose the Requested Records to Circle ("Second Request"). Exhibit 2.

VIII.

On or about August 10, 2011, Mr. Frederick Wallace, the FOIA compliance officer for the Corps' New Orleans district office, contacted counsel for Circle. Mr. Wallace advised that the Corps was working on responding to the request and expected to have the responsive documents assembled by the following week. Mr. Wallace advised Circle's counsel that Circle would be allowed to review the documents in the Corps' office. Finally, Mr. Wallace advised that he would contact Circle's counsel when the documents were ready for Circle to review.

IX.

On August 24, 2011, after having heard nothing further from the Corps, Circle's counsel emailed Mr. Wallace, inquiring about the status of the Corps' response to Circle's FOIA request. Exhibit 3.

X.

On September 8, 2011, having heard nothing further from the Corps, Circle's counsel again requested in writing that the Corps respond to Circle's FOIA request, and that the Corps permit inspection and copying of the Requested Records ("Third Request"). Exhibit 4.

XI.

The Corps has not responded to Circle's Third Request.

XII.

The Corps has refused to produce the Requested Records. The Corps has neither objected to the production, nor advised when Circle would be allowed to review the Requested Records.

XIII.

Attached as Exhibits 1 through 4 are copies of Circle's FOIA Request and correspondence issued by Circle, to which the Corps has never responded.

XIV.

Circle has employed attorneys to represent it in this action and has incurred and will continue to incur expenses for attorney's fees and costs.

XV.

The Requested Records are identifiable records within the meaning of the Freedom of Information Act. The Corps' refusal to disclose the Requested Records to Circle was wrongful and without lawful reason or excuse, and Circle is entitled to the relief provided by the Act.

XVI.

Pursuant to 5 USC 552(a)(4)(E), the Corps' arbitrary and capricious refusal to respond in any manner to Circle's FOIA request and to all of Circle's correspondence and verbal requests, justifies the Court awarding to Circle the attorneys' fees and litigation expenses incurred in bringing this action to compel the Corps to comply with Circle's FOIA request.

WHEREFORE, plaintiff prays:

1. For preliminary and final injunctions prohibiting the Corps from withholding from Circle the Requested Records.
2. For preliminary and final injunctions directing the Corps to make the Requested Records available to Circle and permit the inspection and copying of the Requested Records.
3. For attorney's fees and costs, and for such other and further relief as to the court may deem proper.

Respectfully Submitted,

GARDNER & KEWLEY
A Professional Law Corporation

s/ W. Lee Kohler

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PLEASE SERVE:

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